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No. 86-476

In the Supreme Court of the United States

OCTOBER TERM, 1986

RAILWAY LABOR EXECUTIVES' ASSOCIATION, PETITIONER

v.

STATEN ISLAND RAILROAD CORPORATION, ET AL.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

MEMORANDUM FOR THE FEDERAL RESPONDENTS IN OPPOSITION

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Petitioner contends that the court of appeals erred in affirming the dismissal of a complaint brought under the Railway Labor Act (RLA), 45 U.S.C. 151 *et seq.*, on the ground that petitioner failed to state a claim upon which relief could be granted.

1. In December 1984, the Staten Island Railroad Corporation (SIRC) filed an application with the Interstate Commerce Commission to abandon its rail system, which consisted of 31.16 miles of track and trackage rights between Staten Island and New Jersey (Pet. App. 2a). See 49 U.S.C. (& Supp. II) 10903.[1] Petitioner, in response,

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[1]Section 10903(a) provides that rail carriers subject to the jurisdiction of the Commission may abandon rail service "only if the Commission finds that the present or future public convenience and necessity require or permit the abandonment or discontinuance."

attempted in two ways to obtain labor protective conditions for SIRC's employees: first, by proposing amendment of the employees' collective bargaining agreements through the procedures set forth by the RLA (Pet. App. 2a-3a); and second, by requesting the Commission to impose labor protection as a condition of its approval of the abandonment application (*id.* at 3a-4a). On February 1, 1985, the Commission approved SIRC's abandonment application, subject to certain labor protective conditions (*id.* at 4a).

Shortly thereafter, the New York Susquehanna & Western Railway Corporation (NYS&W), on behalf of its subsidiary Staten Island Railway Corporation (SIRY), offered to purchase SIRC's rail system under the "forced sale" provisions of 49 U.S.C. 10905 (Pet App. 4a).[2] In mid-March, the parties informed the Commission that they had reached an agreement on the sales terms (*id.* at 5a). On April 19, 1985, the Commission approved the sale without imposition of labor protective conditions (*ibid.*).[3] SIRC and SIRY consummated the sale on that date (*id.* at 6a).

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[2]Section 10905(c) provides that within 10 days after the Commission's abandonment decision, "any person may offer to pay the carrier a subsidy or offer to purchase the line." A purchase offer stays the effective date of the abandonment certificate (49 U.S.C. 10904(c)(4)). If the offer meets certain statutory requirements, the Commission shall "postpone the issuance of a certificate" to allow the parties to negotiate a final sale (49 U.S.C. 10905(d)). If the parties are able to reach an agreement that provides continued rail service on the line, "the Commission shall approve the transaction and dismiss the application for abandonment or discontinuance" (49 U.S.C. 10905(e)). See generally, *Hayfield Northern R.R.* v. *Chicago & N.W. Transp. Co.*, 467 U.S. 622 (1984).

[3]The Commission-approved sale transferred only the 16.68 miles of the SIRC rail system actually owned by SIRC. SIRY acquired SIRC's trackage rights on the remaining 14.48 miles through a separate transaction. See Pet. App. 5a n.5.

The next day, petitioner sued SIRC and SIRY in federal district court, alleging that SIRC's sale of the railroad violated the RLA (Pet. App. 1b). Petitioner requested declaratory and injunctive relief requiring SIRC to negotiate changes in the SIRC employees' collective bargaining rights and requiring both railroads to maintain the status quo that existed prior to the sale (*id.* at 1b, 8b-9b). The district court dismissed the complaint on the ground that it lacked subject matter jurisdiction. The court observed that the federal courts of appeals have exclusive jurisdiction to review Commission orders (28 U.S.C. (& Supp. II) 2321, 2342) and concluded that petitioner's complaint constituted a collateral attack on the Commission's order (Pet. App. 6b-11b).

Petitioner appealed the district court's decision and the Commission and the United States intervened as appellees. The court of appeals affirmed the district court's dismissal (Pet. App. 1a-9a). It agreed that petitioner sought, in effect, to rescind or modify the Commission's order and that the district court could not grant the requested relief (*id.* at 2a, 7a-9a). The court of appeals concluded, however, that dismissal should be based on Fed. R. Civ. P. 12(b)(6), which prescribes dismissal for failure to state a claim upon which relief may be granted.

2. The court of appeals correctly affirmed the district court's dismissal of petitioner's complaint. The decision does not conflict with any decision of this Court or of another court of appeals and does not present an issue of sufficient importance to warrant this Court's review.

a. The court of appeals properly concluded that petitioner's suit is, in effect, an improper collateral attack on a Commission order. The Commission, in accordance with 49 U.S.C. 10905, approved the SIRC's sale of its rail line to SIRY, stating that SIRC "must complete the sale so long as the buyer consummates" (Pet. App. 2c). SIRC and SIRY

consummated the authorized sale prior to petitioner's present suit (*id.* at 9a). Petitioner now attempts to disturb this fully consummated Commission-approved sale through a post-sale federal district court action. As the court of appeals explained (*ibid.*):

> If the district court were to require a return to the presale status quo at this point, it nonetheless would be required to modify the ICC's directive giving SIRC and SIRY immediate authorization to consummate the sale. Such a remedy is unavailable in the district court.

See, *e.g.*, *Venner* v. *Michigan Cent. R.R.*, 271 U.S. 127, 130 (1926); *Brotherhood of Locomotive Engineers* v. *Boston & Maine Corp.*, 788 F.2d 794, 799-801 (1st Cir. 1986), cert. denied, No. 85-2153 (Oct. 6, 1986).[4]

The Commission provided petitioner with a full opportunity to present its objections to the Commission's order approving the sale. Petitioner did object, asserting that the Commission must attach labor protective conditions to the transaction. The Commission rejected that challenge, holding that the Interstate Commerce Act (ICA) does not permit

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[4]The district court further explained (Pet. App. 8b-9b (footnote omitted)):

> An order mandating the resumption of railroad services by SIRC would reverse the ICC's order mandating the sale by SIRC of its rail lines to SIRY—a sale which, when consummated, terminated SIRC's authority to conduct rail operations. As against the buyer-railroad, SIRY, [petitioner] concedes that imposition of employee protective conditions or status quo re-employment of the furloughed employees would overturn the ICC order which approved the sale to SIRY without imposing any such conditions.

As the court also observed, "SIRY, which was not a carrier involved in rail operations until after approval of the sale by the ICC * * * and which has never entered into any collective bargaining agreement with any of the unionized employees subject of [*sic*] this action, is an anomalous defendant in [petitioner's] RLA action" (*id.* at 9b n.3).

the imposition of labor protective conditions in Section 10905 transactions, and the court of appeals affirmed the Commission's decision. *Railway Labor Executives' Ass'n* v. *United States*, 791 F.2d 994 (2d Cir. 1986). Petitioner has not requested this Court to review that decision (Pet. 5 n.2). The Commission's judicially affirmed rejection of petitioner's objections is accordingly dispositive. Petitioner cannot raise additional challenges to the Commission-approved transaction through the indirect means of a post-sale district court action.

Petitioner seems to suggest (Pet. 10-11, 18-19) that, even if the district court could not enjoin the transaction, it could "preserv[e] the employees' employment status" (*id.* at 18), presumably by requiring the railroads to provide continued pay and benefits to the employees. The court of appeals was plainly correct, however, in concluding that the RLA does not authorize that remedy in the present circumstances. The RLA remedies are specifically designed "to avoid any interruption to commerce or to the operation of any carrier [engaged therein]" (45 U.S.C. 152). See, *e.g.*, *Brotherhood of R.R. Trainmen* v. *Jacksonville Terminal Co.*, 394 U.S. 369, 377-378 (1969); *California* v. *Taylor*, 353 U.S. 553, 566 (1957); *Russell* v. *National Mediation Board*, 714 F.2d 1332, 1342 (5th Cir. 1983), cert. denied, 467 U.S. 1204 (1984). Those remedies are inappropriate in the face of a fully consummated Commission-approved sale that results in continuation of rail service on the line at issue (Pet. App. 9a). Petitioner's suggested remedy is particularly inappropriate here, where the Commission has determined that the statutory scheme set forth in 49 U.S.C. 10905 provides for continued rail service without the imposition of labor protective conditions.[5]

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[5]The court of appeals, in a companion case, expressly affirmed the Commission's interpretation of Section 10905 in the context of this particular transaction. See *Rail Labor Executives' Ass'n*, 791 F.2d at 1001-1003. As we have already noted, petitioner has not sought further

b. Petitioner contends (Pet. 4, 16-19) that the court of appeals' decision conflicts with this Court's decision in *Order of Railroad Telegraphers* v. *Chicago & N.W. Ry.*, 362 U.S. 330 (1960), and with the Fifth Circuit's decisions in *United Industrial Workers* v. *Board of Trustees of Galveston Wharves*, 351 F.2d 183 (5th Cir. 1965), on appeal following remand, 368 F.2d. 412 (1966), on appeal following remand, 400 F.2d 320 (1968), cert. denied, 395 U.S. 905 (1969). That contention is plainly incorrect.

This Court ruled in *Railroad Telegraphers* that a federal district court lacks jurisdiction, on account of the Norris-LaGuardia Act, 29 U.S.C. 101 *et seq.*, to enjoin a threatened rail strike precipitated by the planned closure of various railroad stations. The Court noted that "[t]he Railway Labor Act and the Interstate Commerce Act recognize that stable and fair terms and conditions of railroad employment are essential to a well functioning national transportation system" (362 U.S. at 336-337) and that the Interstate Commerce Act does not "mak[e] it unlawful for unions to want to discuss with railroads actions that may vitally and adversely affect the security, seniority, and stability of railroad jobs" (*id.* at 340 (footnote omitted)). The Court emphasized, however, that the case did not involve any conflict with outstanding agency orders. As the Court stated (*ibid.*):

> Nothing the union requested would require the railroad to violate any valid law or the valid order of any public agency. There is no testimony and there are no findings that this union has set itself up in defiance of any state mandatory order. In fact, there was no state

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review of that decision. The Seventh Circuit has also upheld that interpretation. See *Simmons* v. *ICC*, 766 F.2d 1177, 1180 (1985), cert. denied, No. 85-438 (Jan. 13, 1986); *Simmons* v. *ICC*, 760 F.2d 126 (1985), cert. denied, No. 85-438 (Jan. 13, 1986).

> order of any kind at the time the union first asked to negotiate about the proposed contractual change.

Petitioner itself concedes that "*Telegraphers* is not squarely on point" (Pet. 17) for this reason.

The supposed conflict with *Galveston Wharves* is also non-existent. In that dispute, the rail carriers had executed a non-transportation lease that displaced rail employees in violation of RLA procedures. The Fifth Circuit held that "the district court has authority to require payment of backpay as a sanction for the Carrier's having violated Section 6 of the Railway Labor Act" (400 F.2d. at 323). However, that case, like *Railroad Telegraphers*, did not involve a Commission order under 49 U.S.C. 10905 approving the carrier transaction and requiring its consummation unless the offeror withdrew.[6] Petitioner essentially argues that the *Galveston Wharves* decision should be *extended* to subject a rail carrier that complies with a Commission's order to district court "sanctions" under the RLA.

c. Finally, petitioner greatly exaggerates the importance of this case. Petitioner characterizes the case as an example of "the recent trend toward regionalization" (Pet 13), stating that the court of appeals' decision "is now being relied upon by other federal courts" (*id.* at 14). In fact, however, this case involves the transfer of ownership of 16.68 miles of rail line (Pet. App. 5a n.5) under 49 U.S.C. 10905, an infrequently used provision.[7]. Even if petitioner's characterization were accurate, it would simply illustrate that other

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[6]The Fifth Circuit specifically observed that the transaction did not require Commission approval. See 351 F.2d at 191 n.28.

[7]Most of the transactionsof concern to petitioners are voluntary transfers governed by 49 U.S.C. 10901, which gives the Commission discretionary authority to impose labor protective conditions.

courts of appeals will have an opportunity to consider the issue. And the fact that other courts may follow this decision is not itself a reason for this Court's review.

It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

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